Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS OF THE MONTANA UNIVERSAL SERVICE TASK FORCE (MUST)

Counsel for MUST:

Michael C. Strand
P.O. Box 5237
Helena, MT 59604-5237

TABLE OF CONTENTS

I. Summary

The issues raised by the Joint Board in its Public Notice are of critical importance, and we at MUST commend both the Joint Board and the FCC for giving interested parties an opportunity to comment. Congress stated quite clearly in the Telecommunications Act that universal service was to be considered a cornerstone of national policy. We are therefore hopeful that the identified issues will be resolved in the manner most calculated to continue to support, promote and advance universal service according to the principles set forth by Congress.

We at MUST believe that those principles face serious threats. In part, these threats arise out of policy directions that have already been established by regulators that we believe need to be reexamined. For example, the notion that Congress intended that ETCs be designated on a mere promise to provide service across an entire study area at some undefined point in the future, with no penalties for failure to honor that promise, seems to us a misreading of the clear language of the Telecommunications Act as well as a violation of the spirit of the Act.

Other examples of threats to universal service include: 1) increasingly burdensome shifts in cost recovery to rural end user local rates, as evidenced by recent aggressive increases in subscriber line charges; 2) the promotion of a "bill and keep" regime for access that, due to the imbalance in traffic between urban and rural areas, would very likely further shift the burden of cost recovery to end user local rates in rural areas; and 3) the arbitrary redefining of study area boundaries to accommodate competition while ignoring the implications on the efficiency and costs associated with the underlying incumbent's total network.

In our view, the resolution of the issues raised in this docket by the Joint Board must be accomplished with an eye to the totality of regulatory decisions in the area of universal service. To do otherwise would ignore the cumulative affect of all of the regulatory activity in this area and the possible detrimental affect on rates and service quality in rural and other high-cost areas.

With respect to the specific issues raised by the Joint Board in this inquiry, recent projections from USAC indicate quite clearly that the designation of multiple ETCs in areas served by rural telephone companies is already resulting in substantial increases in high-cost funding. This is particularly true with respect to the impact of the designation of wireless CETCs. To the extent such growth makes the high-cost fund a political target, the designation of wireless ETCs threatens the continued viability of the high-cost fund that has so successfully supported universal service in rural America for many years.

With very limited exceptions, wireless service is simply not an adequate replacement for wireline service in rural America. For that reason, wireless ETC designation (and the funding of wireless ETCs based on the incumbent's costs) is the greatest current danger to the continued viability of the high-cost fund and to the continued provision of high-quality telecommunications services to rural areas. With limited exceptions, the technology platform utilized by wireless carriers in rural areas provides a standard of service that is far below the standard provided by wireline incumbents and far below the standard to which rural subscribers have become accustomed as their link to the world. Further, while these wireless technology platforms may be able to offer the supported services, they are generally not able to provide the wide variety of advanced and custom services provided by incumbent wireline carriers.

To the extent competitive wireless ETCs constitute a threat to the continued economic viability of incumbent rural wireline carriers, they are also a threat to the continued ability of subscribers in rural areas to receive services like high-speed Internet access, video conferencing and even video programming because the incumbent in many cases is the only entity capable of offering such services.

Wireless ETCs are not in a position, at least with respect to the service areas served by MUST's members, to fill unmet demand or underserved areas because there is virtually no unmet demand and no underserved areas in our service areas. Line growth in the rural areas we serve has been largely flat and our penetration rates are comparable to penetration rates across the country (95%+).

The geographic areas served by the MUST members are vast and among the most sparsely populated in the nation. In order for a single carrier to provide services in such area at affordable rates, funding from the Universal Service Fund is critical. Funding a second carrier, particularly when such funding bears no rational relationship to the second carrier's costs, is not competitively neutral and creates competitive inefficiencies. Funding competitive carriers based on the incumbent's costs places greater weight on promoting competition than on supporting universal service. Therefore such funding does not balance the statutory goals of competition and universal service in the manner intended by Congress.

The focus of regulatory action with respect to universal service should first and foremost be upon the needs of the rural subscribers. Subscribers across rural America are receiving exceptional basic and advanced services from rural telephone companies today. While the high-cost funding received by incumbents continues to grow, that growth is in

no small part due to the regulatory shifting of cost recovery by the FCC from interstate access charges to the Universal Service Fund. If regulators want to control the growth of the fund, they should focus on controlling growth resulting from the inefficient designation of wireless CETCs. Proposals such as the auctioning of universal service or limiting funding to the lowest-cost provider will only harm the quality of service received by rural subscribers.

Finally, our experience at MUST is that wireless CETCs have resisted every attempt to require them to provide information regarding their costs or their expenditures with respect to the provision of universal service. Such carriers argue that such requirements are inconsistent with their unregulated status. At the same time, they have no problem seeking ETC designation from regulators or accepting checks from the high-cost fund. The cost to rural telephone companies of submitting detailed information to regulators and others justifying their receipt and expenditure of universal service funding is not inconsiderable. Fairness requires that wireless CETCs share the same burden. To do otherwise would imply that regulators trust the wireless CETCs but do not trust rural telephone companies.

II. Threats to Universal Service

The Issues Raised by the Joint Board Need to be Viewed In the Context of the Overall Policy Direction Taken by Regulators with Respect to Universal Service Principles.

The Montana Universal Service Task Force (MUST) is an alliance of small[1] rural incumbent telephone companies. While all but one of the MUST members is headquartered in Montana, members also operate in Wyoming, North Dakota and

Nevada.[2] The MUST companies have been providing exceptional service in some of the most rural and remote areas of the continental United States for decades.[3] This commitment to service is deeply ingrained in our corporate culture, in part because of service obligations required of us by lenders and regulators over the years and in part because we are owned and governed by our customers. Our Boards of Directors are made up entirely of subscribers who are elected by their fellow subscribers to ensure they are provided with the best possible service at the best possible price. This type of governance, in conjunction with programs such as the RUS loan program and the Universal Service Fund that were created to advance our nation's long-standing commitment to universal service, has worked tremendously well in keeping rates and services in the rural areas served by MUST's members comparable to rates and services in more urban areas of the country.

When we small, rural telephone companies were approached in 1995 and early1996 about our views on the then-proposed Telecommunications Act of 1996, many if not most were understandably ambivalent. For our areas, the legal and regulatory framework within which we operated was working quite well, and our marketing surveys at the time indicated a high degree of satisfaction with rates and service quality. In fact, for the Montana companies, the customers in our service areas were quite often the envy of urban customers who were served by a Bell Company that simply did not consider Montana to be an investment priority in comparison to more lucrative metropolitan

---

[1] The largest MUST member serves approximately 20,000 access lines and the smallest serves approximately 1,650 access lines.

[2] The members of the MUST alliance are: Blackfoot Telephone Cooperative, CC Communications, Central Montana Communications, Interbel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, 3 Rivers Telephone Cooperative, Triangle Telephone Cooperative Association and Valley Telecommunications

service areas in other parts of the region. Our concern about the Telecommunications Act was primarily that nothing was broken in our rural service areas, so we feared a Congressional "fix" when there seemed so little room for improvement. However, we were somewhat reassured by the clear commitments to universal service and the numerous clauses that recognized the fundamental differences between rural and non-rural providers and the need to safeguard accomplishments already made in rural America.

Unfortunately, much of the policy framework established by regulators in the area of universal service since the Act was passed has strayed to a dangerous degree from the both the intent and the clear language of Congress. Thus our concerns have been reawakened. Some policymakers are apparently under the impression that the mechanisms initially intended to promote and preserve universal service should now be used to foster and encourage competition in rural areas of the country. The members of MUST support the ideals of competition and the undeniable benefits competition has brought to many, many areas of our economy. However, we small rural telephone companies are only too aware of the generally marginal economic conditions of the rural areas we serve. We understand that we and are subscribers have been fortunate that Congress and the FCC had the foresight to create programs that allowed even one provider of basic and advanced telecommunications services to be constructed and maintained in these areas. We have been equally fortunate that the FCC has had the wisdom to frustrate past attempts to eliminate or greatly reduce the funding mechanisms that are so critical to our ability to operate.

---

[3] Most of the members of MUST began operations in the late 1940s or early 1950s. A notable exception is CC Communications, which has been providing service for more than a century.

However, recent policy decisions such as those noted above cause us to wonder if there has been a "sea change" among the policymakers in whom the principles of universal service have been entrusted by Congress. We who know how long and how difficult the tremendous progress we have made in connecting rural America to the world has been wonder if those policymakers have forgotten. We wonder if they know how easily this progress can be damaged or destroyed and the consequences thereof. For a small, rural telephone company with two or three thousand lines, the loss of a few hundred lines can be devastating. For this reason, we believe that policymakers must be especially diligent in ensuring that competition in rural areas is fair and balanced against the public interest.

Throughout the history of our nation we have recognized that market forces must sometimes be constrained in order to serve the common good. The regulation of the so-called "natural monopolies" in telecommunications, energy and heavy transportation are examples. In many cases, we as a nation have determined that market forces must be constrained until an industry reaches a sufficient level of maturity and is "ready" for competition. The railroad and airline industries are interesting and instructive examples that predate the attempts to begin deregulating the telecommunications industry. Equally instructive have been recent attempts to deregulate the energy industry.

As most expected, competition in the telecommunications industry developed more quickly in the urban areas of the country. The jury is still out on the overall success of competition in urban areas in bringing all of the benefits to consumers that were promised during the debate on the Telecommunications Act. Certainly there have been success stories. There have also been numerous, well-publicized failures.

In the rural areas of the country, Congress recognized repeatedly in the Telecommunications Act that the benefits of competition were far more speculative than in the urban areas. While there have certainly been occasional comments from individual members of Congress expressing hope that competition would benefit rural America, the language of the Act clearly sought to offer special protection to rural areas where competition was premature or unworkable. Examples include the existence of the rural exemption to the unbundling obligations imposed on larger carriers, the enumerated universal service principles to which regulators were to adhere in establishing universal service policy, and the very distinct differences in which regulators were directed to approach applications for eligible telecommunications carrier status with respect to the service areas of rural versus non-rural telephone companies.

In our view, regulators at virtually every level have mistakenly started down what has become a very slippery slope. The first step down this slope was equating the importance of the goals of competition and universal service in rural areas. While both are goals of the Act, we think Congress quite clearly established universal service as the paramount goal in rural areas. Regulators continued down the slope by conceiving that mechanisms created to promote and preserve universal service should somehow be manipulated into also supporting the development of competition. In fact, we would argue that for many policymakers the funding mechanism's primary purpose has now become the promotion of competition. Had Congress truly intended this to be the case, it would seem to have been a fairly simple matter for them to have included in Section 254 of the Act words to the effect of "by the way, please also use this funding mechanism to

promote competition in rural areas." We have not detected the foregoing words or any like them anywhere in the Act.

So is MUST just another group of monopolistic incumbents trying to protect their golden goose at the expense of the benefits of competition for their subscribers? To the contrary, we at MUST categorically support the economic and social benefits of competition. Generally speaking, competition promotes efficiency, innovation and low prices (interesting, at least to us, is that we have found being owned by your customers provides much the same benefits, even in a monopoly environment). We would simply remind the reader that the transition from a monopolistic to competitive market is painful enough in populous areas where there is a realistic opportunity for the development of a perfectly or nearly perfectly competitive marketplace. Such a transition is infinitely more painful and fraught with danger in places with at best marginal levels of economic activity and where such activity might not be possible at all without financial support mechanisms that have enormous capacity for manipulation and market distortion.

Our hope is that this proceeding will serve as an opportunity for regulators to take a deep breath and step back a bit to examine the current direction of public policy in this area. The undeniable truth evidenced by the profile of the MUST members set forth later in these comments is that subscribers in many if not most rural areas of the country are doing quite well with respect to the services and rates available to them without subsidized competition in the local telecommunications marketplace. The opportunity to save $5 per month on a local telephone service bill may be appreciated far less than some policymakers might think if part and parcel of these savings means also losing the area's only provider of broadband Internet access, private network services, television services

and videoconferencing services (to name just a few). These subscribers may also be less than completely enthusiastic to find their saving comes at the cost of experiencing large numbers of dropped or blocked calls due to network congestion, the inability to complete some calls due to incomplete geographic network coverage, the inability to access emergency services during severe weather due to inadequate power redundancy, or even something as simple as being able to talk to another live human being about questions on services or rates. These are the kinds of experiences consumers have come to expect from wireless providers in rural America.

Among the areas in which we believe regulators have taken a dangerous direction are: 1) the extremely low threshold of service quality being required of applicants for the purposes of ETC designation (coupled with the perverse incentive to approve as many ETCs as possible simply because doing so brings more dollars into the state at issue – which doesn't even work absent imposed buildout requirements by the state regulatory authority); 2) the portability of universal service funding based on the incumbent's costs, resulting in the nonexistence of any rational relationship between the costs incurred by a competitive ETC and the support it receives and consequent danger of market distortion; 3) the substantial shift of cost recovery to rural end user local rates resulting from aggressive increases in the subscriber line charge (and the simultaneous shifting of additional cost recovery to the universal service fund, exacerbating the concern set forth in item 2), above, and which endangers the "reasonable comparability" of rural and urban rates; 4) the promotion of a "bill and keep" regime to replace the current access charge system, which in most cases would cause even greater upward pressure on local rates in rural areas due to the imbalance in calling patterns between urban and rural areas; 5) the

rather off-hand ways in which many regulators treat the modification of study area boundaries for the purposes of ETC designation as if rural companies operated collections of "mini-networks" that could simply be "lopped off" at any point without damaging the integrity of the remainder of their network(s); and 6) the above-mentioned FCC ruling that when Telecommunications Act says an applicant for competitive ETC designation must serve an entire study area, Congress really meant that service had to be provided throughout the study area at some completely undefined point in the infinite future (and even then there is currently no penalty if service is never actually provided across the entire study area).

Clearly, a number of the foregoing issues fall outside the scope of the instant proceeding. The point we would like to make is that we are seeing decision after decision from regulators in the name of competition that we believe will drive local rates up or drive service quality down, or both. Presumably these decisions are being made to fix the problem of lack of competition in rural areas. However, there has not been a clear showing that competition will result in lower prices or better service. All that has been shown thus far is that competition will drive up the size of the Universal Service Fund. Given the undeniable success of pre-1996 universal service policies in rural areas, changes to the system that supports universal service should be made in moderate increments to avoid irreparable damage to that success.

Focusing on the scope of this matter as outlined in the Public Notice, recently developed regulatory policies pertaining to the designation, certification and support of competitive eligible telecommunications carriers (particularly among wireless providers) and the likely impacts of those policies on the long term viability of the Universal Service

Fund cause us great concern. Our fear is that the FCC's current policy (as well as the policies of a number of state public utility commissions) has become one of pursuing the development of competition in rural areas at the expense of preserving true universal service (i.e., at the service quality levels to which small company subscriber have become accustomed). In our view, such policies will result in driving service quality in rural areas to the lowest common denominator represented by the current FCC definition of supported services, which is entirely silent with regard to critical areas such as reliability, coverage, redundancy, equal access, unlimited local calling and customer support. In essence, this lowest common denominator will be the lowest possible level of service that is sufficient to gain and retain eligible telecommunications carrier status. Given the current rules with regard to portability, carriers will be driven to this level of service at the risk of being priced out of the marketplace. A provider will provide a higher level of service at its own peril, since a competitor providing inferior service will be supported based on the costs of the incumbent's superior service. If, as a matter of public policy, this lowest common denominator level of service is the level to which the FCC believes rural subscribers should be driven in order to minimize the size of the Universal Service Fund, then we believe the FCC's policy is in direct contravention of the reasonable comparability principles of universal service as well as the provisions regarding access to advanced services set forth quite clearly in the Telecommunications Act of 1996.

II. PROFILE OF THE MUST ALLIANCE

The purpose of the following material is to give the reader a sense of nature of the companies on whose behalf these comments are filed, as well as an understanding of the communities they serve. In many cases, these companies are the sole providers of certain services. Some of these services are highly advanced. We are aware that there are those who feel that small rural companies are using universal service funding inappropriately to fund advanced services. We would respond by saying that our books and records are kept in accordance with FCC accounting rules and are regularly audited by the National Exchange Carrier Association (NECA) to ensure compliance with those rules. Additionally, our expenditures are certified by our state public utility commission on an annual basis. We would add that many of the advanced services we offer are available only because we have pooled our limited resources with those of our neighbors in various partnerships and consortia. We have also worked hard to find opportunities to reduce costs, such as purchasing overstocked equipment via on-line auction services. Finally, we were fortunate that the loan provisions that were part of our Rural Utilities Service construction loans required a level of quality in our networks that have made them far more conducive to the deployment of advanced services than many networks of the larger ILECs across the country. Therefore, we have not (in most cases) had the same kinds of costs associated with "conditioning" our lines so advanced services could be offered over them.

The nine companies that comprise the MUST alliance serve a total of 93,864 access lines across approximately 68,000 square miles, or an area about the size of the

state of Missouri.[4] All of the MUST companies provide local dial tone and the full list of CLASS and custom calling features. All provide intrastate, interstate, and international long distance services. All provide dial-up Internet access to all of their exchanges. MUST's members provide high-speed, dedicated Internet access using DSL technology to 112 of the 145 exchanges they serve, the largest of those exchanges being the town of Fallon, Nevada, with a population of 8,191 (the second largest is Glasgow, Montana, with a population of 3,780, so you can see Fallon is quite the metropolis by our standards) and the smallest being the town of Hazen, Nevada with a population of 50 (the next largest is Flaxville, Montana, with a population of 75).

All but one of the MUST members provide videoconferencing in their service areas through a jointly-owned entity called Vision Net, and they have constructed a total of 93 fully-interactive videoconferencing studios located primarily in public educational institutions (the educational institutions own the studios and Vision Net provides the service). The studios are located primarily within service areas of the MUST members, although there are a handful outside those areas, most notably in universities and community colleges. These studios are heavily utilized in large part because small, rural schools find it difficult to retain enough teachers to meet state certification standards without sharing teaching resources with other schools across the region. The video services are provided to these institutions along with high-speed Internet access over an ATM network.

The Montana members of MUST are part of a larger consortium of small independents that have constructed a statewide fiber optic network known as the Montana Advanced Information Network (MAIN), consisting of over 1,200 miles of fiber

[4] Missouri is the 21st largest state, with 69,709 square miles. Florida is 22nd, with 65,758 square miles.

backbone that links Montana's urban and rural areas to similar regional and national fiber networks. Individually, the MUST members have constructed 4,656 miles of fiber optic routes within their service areas to ensure the best possible access to voice, data and video services for their customers. Again, these small companies have come up with creative ways of sharing resources in the planning of these routes, the acquisition of rights-of-way, and construction.

Several of the MUST members have also teamed up to build five data centers referred to as "fiber hotels" in Montana's largest communities through an entity known as iConnect Montana. These data centers create a "plug and play" environment for telecommunications and Internet-based businesses to collocate in a secure, environmentally-controlled location with access to multiple fiber optic and wireless broadband networks. The MUST members are thus able to locate their own equipment in these fiber hotels in order to access better bandwidth prices to the outside world, while sharing the costs of the facilities with other businesses that need such access.

All but the two smallest MUST members provide either digital or analog wireless voice services, both in their own service areas and in the service areas of other local telephone companies. Some use cellular spectrum, while others use PSC. The MUST group as a whole provides wireless voice service to 17,171 customers.

Several of the MUST members have also teamed up to build their own small publishing business, known as North Winds Publishing, which not only publishes the telephone directories for the MUST members but also prints directories for other telephone companies across the region and engages in publishing activities for non-

telecom businesses. Again, this allows the MUST members to save money on their own printing needs by spreading their costs across a larger body of companies.

Two of the MUST members currently provide video programming, one via DBS satellite service and the other providing cable TV service over DSL connections. The DBS provider also provides broadband access to the Internet using satellite technology.

All but one of the MUST members is affiliated with the Yellowstone Regional Internet Exchange (YRIX), which provides the only Internet peering point in the state of Montana, based in the Billings fiber hotel. The peering arrangement allows all ISPs that subscribe to YRIX to exchange Internet traffic that originates in Montana and is bound for another Montana location to be exchanged in a manner that keeps the entire route of that traffic within the state, resulting in faster, more efficient, and less expensive use of the telecommunications network.

MUST's members have been diligent in promoting service to low-income customers and Native American service areas. They currently serve 1,979 Enhanced Lifeline customers and 1,315 regular Lifeline customers.

All of the MUST members were designated as ETCs by their respective public utility commissions in 1997.

There are a couple of points worth noting from the above material. First, these companies have struggled to ensure that rural subscribers have access to the same services as their urban counterparts, regardless of income. Second, the wireline technology platform supported by universal service funding is also sufficiently robust that advanced services have been built onto it, further helping to ensure that rural areas don't fall behind. Lastly, these companies consider wireless to be an integral part of the

total telecommunications package that should be available to rural subscribers. Yet to date, none of the MUST members believes that wireless is a sufficient replacement for wireline to warrant an application for universal service funding to support their own wireless operations. Finally, there are competitors in our markets for most of the services identified above: local voice, long distance voice, data transport, dial-up Internet, video programming, data center services, etc. The members of MUST expect to compete for customers of these services. They are not anti-competition. They do, however, oppose unfair competition such as supporting providers of universal services based not on their own costs but on the costs of others.

III. STATE OF THE MARKETPLACE AND UNIVERSAL SERVICE FUND

A. Current Trends Indicate that Growth in the High-Cost Fund Due to Funding for CETCs Will be Explosive

As noted in the Joint Board's Public Notice, CETCs received $2 million in the first quarter of 2001, which increased to $14 million by the third quarter of 2002. Since the publishing of the Public Notice, more recent data have become available from USAC. According to USAC, CETCs are projected to receive $147 million from the fund in the second quarter of 2003. Therefore, over the course of less than one year, the amount of funding received by CETCs will have increased by more than ten fold. Moreover, CETCs will receive more than 70 times as much funding in the second quarter of 2003 than they did a little more than two years ago in the first quarter of 2001. This rate of growth can only be characterized as explosive. If the current rate of growth continues,

CETCs will be taking as much from the fund as the incumbents within the next two to three years. We find the fact that more than 95% of this funding will go to wireless CETCs particularly troubling, given our reservations about the quality of service that be provided over most wireless networks in rural areas.

These predictions regarding growth are buttressed by recent announcements by some of the larger wireless companies in the United States that they would begin seeking ETC designation despite earlier philosophical opposition to such a move.[5] These announcements would seem to indicate that there will be far greater upward pressure on the universal service fund going forward. Other applications are also pending. For example, Western Wireless has recently applied for ETC designation in the areas served by Qwest Communications in Montana.

An additional point worth noting is that many small rural wireline incumbent telephone companies also own all or part of wireless companies operating across rural America. The vast majority of these enterprises have not sought ETC designation to this point. However, to the extent these enterprises must compete with other wireless carriers that gain ETC designation, common sense would dictate that they will seek similar designation in order to compete on a level playing field with wireless ETCs operating in the same area. This would further fuel the growth in receipts by CETCs and therefore growth in the overall high cost fund.

[5] Telecommunications Reports Daily reported on April 28, 2003, that ALLTEL and Nextel Partners would be seeking ETC designation in selected markets.

B. In Most Instances, Competitors Offer Only a Small Subset of the Services Provided by the Incumbent and Even Those Services Cannot in Every Case be Considered Substitutes for the Incumbent's Service

The existence of competition with respect to services provided by the incumbent LEC members of the MUST alliance can only be determined on service-by-service basis. Moreover, a determination of whether a particular service is truly "competitive" involves a subjective analysis of pricing, quality of service, and the needs of the particular consumer.

For example, wireless voice competitors exist in all of the service areas of the MUST members. To the extent a customer could choose to refuse landline voice service for local and/or long distance calling, the wireless carriers could be considered competitors for these services. On the other hand, if the primary attribute a particular customer seeks in a voice service is mobility, clearly wireline service is not a competitive offering for that particular customers' needs.

By the same token, if a particular customer's buying decision for voice service requires that he be able to receive voice and broadband Internet access on the same line, none of the wireless providers that operate in the service areas of MUST's members provides a service that could be considered competitive with the ADSL services provided by all of MUST's members. Nor could any of these wireless carriers be considered competitors for services like video programming, or video conferencing because their networks are incapable of providing adequate bandwidth for these services.

Further, even where a competitor offers a service that is similar to the incumbent's service, it may not constitute a substitute service, depending on the precise needs of the consumer. For example, given the inherent unreliability of wireless services

in rural areas (e.g., poor geographic coverage, large numbers of dropped or blocked calls due to lack of channel capacity, etc.), such providers would likely not be considered true competitors by some customers for whom reliability is a major factor in the purchasing decision.

This discussion underscores one of the most dangerous aspects of current policies regarding the designation of multiple ETCs in rural areas. While there may be more than one provider that is capable of providing the FCC's basic "supported services" in a given area, our experience is that competitors rarely offer the full range of other, more advanced telecommunications services. As we note below, funding a competitor based on another carrier's costs has the potential to distort the market. This is particularly the case when an inferior network is funded based on the costs of a superior network. In such cases, the inferior network provider can use the funding to reduce prices in order to offset the quality advantages of the superior network. This threatens the provider of the superior network because he must either cut prices or raise quality even higher. But if he raises the quality even higher, his inferior competitor gets support based on the costs of providing that higher quality, which the competitor can use to further cut prices. For these reasons, providing support to an inferior wireless CETC based on the costs of the superior network of a small, rural wireline incumbent threatens the continued viability the incumbent. But the consequences are greater than just losing one provider of supported services. Also threatened is the ability of rural consumers to obtain advanced telecommunications services at all, since the wireline incumbent is often the only provider of these services.

For example, there are virtually no competitors for broadband services such as high-speed Internet access in our service areas. There are no competitors at all in any of the exchanges we serve for fully interactive videoconferencing service, which has become a critical need for small educational institutions the service to share teaching resources and meet state certification requirements. In short, MUST's small rural providers are not just providers of the basic supported services, they are in many cases the only carrier that can provide of the whole range of basic and advanced telecommunications services in their service areas. While there are at least two wireless providers operating in all of the MUST service areas, they simply do not have a technology platform that is capable of offering substitutes for most of these services. The best data throughput rates for wireless providers in MUST's service areas are around 14Kbps, far less than our dial-up rates. Even if the wireless providers in our areas ever get around to deploying the so-called "3G" technology they have been promising for many years, the providers in our area are hopeful they will someday get up to a rate just under 100Kbps, which is still far too slow to be competitive with the advanced services provided by the incumbents.

We have thus far seen little or no relationship between competitive entry and the receipt of high cost funds. In Montana, at least, all of the companies that have applied for CETC status, wireline or wireless, have done so well after they entered the competitive marketplace. All were providing services in their current service areas for a significant period of time prior to applying for ETC designation.

C. Line Growth in the Areas Served by MUST's Members is Largely Stagnant

As noted earlier, the MUST members currently serve 93,864 access lines with voice service using wireline technology. The MUST members also provide voice service to 17,136 customers using wireless technology. Two years ago, the MUST members served 94,399 wireline voice lines and 13,885 wireless voice lines.

There is line growth with respect to wireline voice services in some of the areas served by the MUST members and no growth or negative growth in others, depending on a variety of circumstances such as local and national economic conditions and agricultural commodity prices and weather conditions such as the multi-year drought afflicting much of the state of Montana. As noted above, the MUST members have seen very little growth in lines for wireline voice services.

We have, however, seen significant growth in our wireless customer numbers over the past five years. That growth has, however, slowed recently as it appears that our rural markets have become nearly saturated. Between 2000 and 2001, we added nearly 2,000 wireless customers. Between 2001 and 2002, growth fell to a little over 1,300 customers. Our sense is that there is little or no unmet demand for wireline service and rapidly decreasing unmet demand for wireless services in our service areas.

There are a limited number of locations where line growth exists. These areas are primarily either in places that offer scenic beauty and recreation opportunities such as the mountainous areas of western Montana or in small communities that are proximate to urban areas. In the latter case, we see growth in new lines primarily involving subscribers that commute to the urban areas. Again, despite these pockets of growth, overall line growth for the MUST members is negligible or nonexistent.

While we lack empirical evidence on this point, our feeling is that roughly 60% of the customers that take our DSL service disconnect their second lines because they are able to use voice services and access the Internet over the same line. Therefore the deployment of DSL technology actually results in negative line growth. We believe that some percentage of our customers use cellular service for long distance calling because of the larger local calling areas the cellular carriers can provide. We also believe that a small percentage of customers are using cellular services for both local and long distance service and have abandoned wireline service altogether for voice service, but we do not have hard data in order to estimate what percentage of customers have done so and do not know how many have retained wireline service for dial-up or dedicated Internet access..

Most of the MUST members have overbuilt one or two Bell company exchanges that border their service areas. In such cases, the MUST member has generally been quite successful in capturing lines from the incumbent. To date, none of the MUST members have been granted ETC designation for the Bell Company service areas in which they compete, although one application for ETC designation is currently pending with respect to one exchange.

With the exception of the CLEC lines, all of the wirelines served by the MUST members are eligible for funding from the Universal Service Fund. As noted earlier, most of the MUST members also provide wireless service, both in their own service areas and in the service areas of other wireline telephone companies. None of the wireless operations of the MUST members have sought ETC designation for their wireless operations. However, our primary reasons for not seeking ETC designation have been that 1) we do not believe that wireless service in rural areas is an adequate substitute for

wireline service such that it is entitled to funding at the levels that exist for wireline service, and 2) we are not faced with competition from other wireless providers that get funding because no wireless carrier in Montana has yet been designated as an ETC.[6] If a wireless competitor were to obtain ETC designation, we would necessarily have to reevaluate whether we too should seek ETC designation for our wireless operations so that our wireless operations do not compete on a playing field that is not level with wireless carriers that are receiving support.

D. The Issue of Whether Wireless Service Complements Wireline Service or is a Substitute for it Depends on the Needs of Each Consumer. To Date, Most Consumers Appear to View Wireless as a Complementary Service.

We can only speak to the observations we have made with regard to our own customers on this issue, but our view is that wireless service is for the most part a complementary service rather than a substitute service for the vast majority of our customers. We are aware of instances where customers have dropped wireline service and gone completely wireless, but to date those cases appear to be relatively rare. Since no wireless companies have thus far been granted ETC designation in Montana, we cannot say how this situation might change if wireless carriers are granted ETC designation and use universal service funding to significantly reduce rates to customers, undercutting our own rates. Wireless ETCs have been designated in the other states in which we operate, but we do not yet have numbers on how may customers have dropped their wireline service. Should a wireless ETC choose to use funding to dramatically reduce prices for local service, our concern is that there will be severe long term

[6] Western Wireless Corporation currently has an application pending before the Montana Public Service Commission for ETC designation in the areas served by Qwest Communications.

consequences for subscribers in our service areas. While some subscribers may benefit in the short term from lower wireless rates, the economic damage to the underlying wireline incumbent from lost revenues (not just local revenues, but also access revenues) cannot help but have a detrimental affect on the technology platform that our rural subscribers rely upon for services such as high-speed Internet, video conferencing, private line services and the like. Further, serious problems with wireless technology are far from being resolved, such as reliability, network redundancy, geographic coverage, customer support, carrier of last resort obligations and emergency services.

IV. METHODOLOGY FOR CALCULATING SUPPORT IN COMPETITIVE STUDY AREAS

A. Providing universal service support for multiple ETCs in high-cost areas results in inefficient competition and imposes greater costs on the universal service fund. Current rules do not promote competitive neutrality and do not properly balance the statutory goals of competition and universal service.

The primary concern of the MUST group with regard this question is the support for wireless CETCs. That said, we are certainly not against the deployment of wireless technology in rural areas. As noted above, we provide wireless voice services to thousands of our own customers and to our own staff and management. We have invested millions of dollars in wireless technology in rural areas, and we compete daily with other wireless providers. The mobility of wireless voice makes the service an outstanding complement to wireline service. However, as noted above, we do not consider wireless service to be a substitute for wireline service, with limited exceptions.[7]

[7] We would allow, for example, that there may be wireless providers in urban areas that have developed services that are broadband capable and that have constructed technology platforms that are sufficiently

To the extent a CETC is using wireline technology to compete with an incumbent, our concerns are generally lower because we can be far more encouraged that the technology platform is capable of offering services that can truly substitute for the incumbent's service. Admittedly, even wireline service can fail to be a substitute if provided by an unskilled carrier, but we are generally comfortable that our state public utility commission can separate the good from the bad in the ETC designation and certification processes.

Our view is that the designation of a wireless carrier as a CETC in a service area where an incumbent wireline ETC already exists is highly likely to result in inefficient competition and growth in the Universal Service Fund. Generally speaking, universal service support to wireless carriers is "found money." Wireless CETCs are not required to provide the service quality attributes, nor are they required to provide many of the attributes of wireline service (e.g, adequate channel capacity, power redundancy, full geographic coverage, equal access to long distance providers, acceptable Internet speeds, etc.), but the wireless CETCs are funded from the high-cost fund based on the wireline providers' costs. As noted earlier this is a windfall to the wireless ETC because their costs of providing inferior service are generally below those of the incumbent wireline carrier (you get what you pay for).

Because wireless ETCs receive support at levels that have no rational relationship to their costs, the underlying telecommunications market is distorted. An analogy would be a customer trying to decide whether to purchase a new car and comparing a small, cheaply-made economy car to a well-built, full-sized sedan. The full-sized sedan is more

---

robust to be comparable to wireline service. These carriers are, however, the exception to the rule, and we have seen no wireless networks in our near our service areas that are comparable in quality to the wireline

expensive to build and thus is priced higher. The small economy car is less expensive to build and thus is priced lower. The consumer can make a rational decision as to whether the value of the additional quality in the sedan is enough to that consumer for him to pay the additional price. If financial support were available to the car makers in the same way it is currently available to telecommunications companies under the FCC's rules, the maker of the small economy car could receive financial support sufficient to defray the cost difference between manufacturing its small, cheaply-made economy car and its competitor's well-built sedan. In this manner the market for cars would be distorted. There would be no incentive for the maker of the small economy car to use his windfall to start making sedans. To the contrary, his incentive would be to reduce the price of his economy car in order to capture more market share and to pocket the profits. For the sedan maker, the greater his cost is of producing a quality vehicle, the greater the windfall to his competitor (and the greater the sedan maker's inability to compete on price).

In the foregoing analogy, the primary business of MUST's members is producing sedans in the sense that our core wireline network is able to offer the full range of telecommunications services in a highly reliable manner. In the past, everybody got the telecommunications equivalent of a sedan, and in fact MUST's members were required to provide sedans by the terms of their construction loans and by state public utility commissions. We are now faced with competition from wireless carriers that constitute the small, cheaply made economy car makers in the foregoing analogy. They can get voice signals from one point to another, but they can't do so with the same degree of

---

networks.

reliability as the wireline providers and they can't offer the full range of other services provided by the wireline providers using the wireline platform.

All of that said, we are prepared to stack our well-built sedans up against the small cheaply made economy cars and let the customers choose. The problem is that when the wireless carrier is designated as a CETC, the wireless carrier gets a level of support based on the costs of providing superior service and technology (sedans). Under the current portability rules, our competitors can practically give their inferior, less reliable service (economy cars) away. No matter how superior our service is, we cannot compete with a free or nearly free service, even if its quality is substandard.

As a result of this market distortion, competition becomes inefficient. The costs of cheaper, less robust wireless service are financially supported as if the provider were providing the superior service quality associated with wireline service (or in other words as if the wireless service were a complete substitute for wireline service). Such support to the wireless CETCs also unquestionably increases the size of the universal service fund because the vast majority of customers thus far that take the wireless alternative also maintain their wireline connection. Hence both connections are funded at the same level, despite the difference in quality, resulting in the explosive growth alluded to earlier in these comments.

In short, the current portability rules do not promote competitive neutrality because the wireless ETCs are unfairly advantaged when their support bears no rational relationship to their costs of providing service.

As to whether the rules properly balance the statutory goals of competition and universal service, we would first point out that the paramount goal of the universal

service fund is to promote universal service, not competition. While we understand the Commission's concerns about the development of competition, nothing in the Telecommunications Act of 1996 states that the Universal Service Fund was to be a vehicle for the promotion of competition. While a few members of Congress may have stated their hope that such would be the result, not enough of them felt that way to include such sentiments in the actual statute. Had Congress intended the Universal Service Fund to be a vehicle to promote competition, it could have said so quite clearly in Section 254 of the Act. It did not do so.

Our understanding of the primary rationale for tying a competitive carrier's support to the per-line support of the ILEC was that it promoted administrative simplicity. That rationale simply does not overcome the negative implications of the rule in terms of market distortion and explosive growth in the Universal Service Fund. The Commission's rules create an unfair advantage for ETCs with lower costs where those ETCs do not provide services that are truly substitutes for the incumbent's services. A wireless carrier that meets the statutory requirements for ETC designation and is so designated, should be supported based on its own costs of providing the subset of the incumbent's services that it is able to provide at the level of quality (e.g., reliability, geographic coverage, etc.) it is able to provide. Wireless CETCs should be supported based on their own costs. They should not be supported based on the incumbent's costs of providing a platform that can support the full range of telecommunications services and providing the supported services at a superior level of quality. The FCC's rules should be changed to eliminate this unfair advantage.

B. Determining Support Based on the Lowest-Cost Provider's Cost is Inappropriate Because Such a Suggestion is Based on Erroneous Assumptions and Would Harm Rural Subscribers.

As noted above, an "apples to apples" comparison between an incumbent's network and the network of a CETC is rarely possible, particularly when comparing a wireline network to a wireless network. Policy makers cannot assume that just because two carriers have both been designated as ETCs that they have identical or even similar network capabilities.

First, as noted above, there are critical distinctions between wireline incumbents and wireless competitors relating to reliability, geographic coverage, traffic capacity, redundancy and customer support, just to name a few. Further, in the case of the incumbent, the network is almost always a far more robust platform for offering advanced and custom telecommunications services that may not be included in the list of supported services. In rural areas, this platform is almost always the only technology platform available upon which the full range of these services can be offered. Ignoring this fact and focusing only on supported services would constitute a willful decision on the part of policymakers that the language of the Telecommunications Act calling for deployment of advanced services in rural areas should be disregarded simply because "it is not the subject of this docket." Such a form over substance rationale would do a tremendous disservice to the people living in rural America and would be inconsistent with the fundamental principle of universal service that rates and services are to be comparable between urban and rural areas.

C. For Similar Reasons, Auctioning Universal Service Support Would Harm Rural Subscribers.

Again, the suggestion of auctioning universal service support is based on the erroneous assumption that an apples-to-apples comparison can be made between an incumbent and a competitor simply because both have been designated as ETCs. In the areas served by MUST's members, the incumbent's technology platform is the only platform available to offer services that have become critically important to the social and economic viability of the rural communities they serve. Educational videoconferencing, for example, has become commonplace. Schools have come to rely upon it quite heavily to successfully provide educational services and job training in rural areas. By the same token, rural businesses have come to rely on the existence of broadband connections to the Internet as well as private and virtual private networks for which there simply are not competing technology platforms.

Auctioning universal service support may result in awarding the support to the lowest-cost network for the supported services. However, it may also result in the loss of support for the only technology platforms upon which advanced services can be offered in rural areas. Lacking alternatives for such advanced services, rural areas may lose them altogether as a result of such auctions.

D. Regulatory Policy Must Recognize that It is Not Too Much to Ask that CETCs Meet the Same Kinds of Regulatory Reporting Obligations as Incumbents if Those CETCs are to Enjoy Universal Service Funding.

We at MUST have seen a number of briefs from CETCs seeking to be absolved from having to engage in any kind of reporting requirements or responses to regulatory

requests for information. Given the heavy burden of accounting rules and reporting requirements the MUST members have accepted as part of the funding process, this position by many CETCs strikes us as fundamentally unfair. The high-cost fund is currently projected to provide $147 million in support to CETCs in the second quarter of 2003. For the CETCs to argue that regulators should simply send them the check and mind their own business when it comes to questions about whether that money is being spent properly seems inappropriate to those of us who are grateful for the support and willingly submit information justifying receipt of that support.

The reporting obligations for CETCs should be at least as rigorous as the reporting requirements imposed upon incumbents. This is particularly true because of the inherent difficulty of determining whether the money is being spent properly when the amount is based on somebody else's (the incumbent's) costs. Further, if growth in the fund is a concern, then surely the fund should be given the opportunity to save money that would otherwise be directed at inappropriate expenditures.

By the same token, limits in funding that affect incumbents, such as caps, should also apply to CETCs. While we do not believe that Congress intended competitive neutrality to apply to universal service (quite the opposite, in fact, as is evident in the clear language of the Act and its safeguards for rural areas), since the FCC has chosen to add the requirement this is an appropriate area in which to exercise it. Incompletely-funded incumbents should not be forced to compete with fully-funded CETCs.

V. SCOPE OF SUPPORT

Limiting Support to Primary Lines and/or Residences is Contrary to the Principles of the Telecommunications Act and is Impractical and Would be Excessively Complex to Administer.

As noted in the Joint Board's Public Notice, Section 254 of the Telecommunications Act of 1996 identifies one of the principles of universal service to be that access in rural and high-cost areas should be "reasonably comparable" to urban areas. Second lines and lines to secondary residences are commonplace in urban areas, and such lines are generally tariffed and/or priced at the same rates as primary lines. A policy of not supporting second lines and/or lines to secondary residences would create upward pressure on the rates for such lines in rural areas, endangering the comparability of rates for such lines to rates in urban areas. Thus a policy of not funding such lines would violate the universal service principles of the Act.

Further, such a policy would be impractical and administratively unworkable. It would seem inappropriate for a federal agency to dictate to a consumer which of his or her lines and/or homes should be considered primary. At the same time, there would seem to be legitimate public policy reasons why consumers should not make the designations themselves (for example, a consumer may be persuaded to make such a designation based on price alone, while policymakers may want to utilize the designation to further other goals such as encouraging or assuring certain standards of customer service). Further, auditing the numbers of primary lines reported by competing ETCs and resolving disputes in which more than one ETC claims to be providing service to a primary line and/or residence would be unduly time consuming and complex.

VI. PROCESS FOR DESIGNATING ETCs

The Current Low Standards Applied by Many States and the FCC to ETC Designation Applications by Competitive Wireless Providers Threaten Both the Viability of the High-Cost Fund and the Interests of Rural Subscribers

As noted earlier in these comments, we at MUST are greatly concerned by the policies of many states that have designated wireless CETCs in rural areas, often with cursory examination of the public interest. We are persuaded that many of these states will come to regret these decisions as small, rural wireline incumbents lose the financial ability to maintain their robust, highly flexible technology platforms and their commitment to customer service.

That said, we are equally concerned about the FCC's approach to designating wireless CETCs. For example we read the Telecommunications Act as requiring that a wireless applicant for ETC designation must provide service throughout a rural telephone company's study area as one requirement for designation. In its declaratory ruling involving ETC designation in South Dakota, the FCC ruled that Congress intended that language to mean that a mere promise to provide service throughout a study area at some completely undefined point in the future was adequate to justify designation. Moreover, the FCC's ruling declined to establish any penalty or other consequences for breaking that promise. In our view, the ruling therefore essentially eliminated the geographic coverage requirements of the Act. We are concerned that the FCC may do the same with regard to the public interest criteria set forth in the Act with respect to the designation of multiple ETCs in rural areas.

We believe that criteria should be established in order to make the public interest determination in applications for ETC designation in areas served by rural telephone companies. However, those criteria need to go far beyond a cursory analysis of whether the applicant provides the "bare bones" list of services promulgated by the FCC. The criteria need to address issues of reliability, network congestion, network redundancy, customer service, corporate financial viability, the flexibility of the underlying technology platform to offer services beyond the supported services, commitment to customer support, and the requirement that the applicant thoroughly and honestly report to the fund administrators regarding its costs and the propriety of its expenditures.

VII. Conclusion

This inquiry is one of tremendous importance, not just for small, rural telephone companies like the members of MUST, but also (and more importantly) for rural subscribers who have come to expect a level of telecommunications service that is competitive with that enjoyed by their urban counterparts. The universal service provisions of the Telecommunications Act of 1996 give them the right to have such expectations.

In our view, a number of recent regulatory decisions at both the state and federal levels give such subscribers cause for some alarm. The opportunity exists in this docket to lessen that alarm. CETCs should be funded where they meet the requirements of the Act based on their own costs of providing service. Supporting them based on the

incumbent's costs distorts the market and results in unfair competition. Regulators should utilize the high-cost fund to promote universal service, not as a mechanism to promote competition. Further, while the fund may only support so-called "supported services," ignoring the flexibility of the underlying technology platforms to provide other, more advanced services has the potential to do great harm in rural areas that lack alternatives for such services. The Act also promotes the deployment of such services. Finally, MUST understands the need to keep the size of the high-cost fund manageable. However, focusing on network costs alone in distributing support has the potential to do enormous damage in rural areas if the cost-cutting results in service that is substandard and thus not reasonably comparable to service in urban areas.

RESPECTFULLY SUBMITTED this 5th day of May, 2003.

Michael C. Strand

Counsel for MUST